



Paper No. 6

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**OFFICE OF PETITIONS**

**ON PETITION**

In re Application of  
Culpepper et al.  
Application No. 09/839,616  
Filed: April 20, 2001  
Attorney Docket No. M297. D-3032-1

This is a decision on the petition under 37 CFR 1.137(b), filed on January 2, 2002 (Certificate of Mailing date November 21, 2001), to revive the above-identified application.

The petition is **DISMISSED as moot.**

The application was filed on April 20, 2001. On June 15, 2001, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Corrected Application Papers ("6/15/01 Notice"), stating that substitute drawings in compliance with the margins requirements of 37 CFR 1.84 must be timely submitted to avoid abandonment of this application.<sup>1</sup> An extendable 2-month period was provided for submitting the corrected drawings.<sup>2</sup>

The instant petition encloses a set of corrected drawings in reply to the 6/15/01 Notice. However, this petition was filed prior to the end of the maximum extendable period for responding to the 6/15/01 Notice, i.e., January 15, 2002.<sup>3</sup> Moreover, the transmittal form filed

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<sup>1</sup> MPEP section 507 (Aug. 2001) (To implement 18-month pre-grant publication of patent applications, the PTO has revised its drawing review process such that drawings in new utility/plant applications filed on or after 11/29/00, which is the case here, are initially reviewed by the OIPE to see if they can be effectively scanned and adequately reproduced. If the drawings are not acceptable, OIPE will object to the drawings, and notify the applicant to timely submit acceptable drawings to ensure timely publication of the application . . . [C]orrected drawings must be [timely] filed . . . to avoid abandonment of the application.).

Also, 37 CFR 1.85(a) (A utility/plant application will not be placed on the files for examination until objections to the drawings have been corrected); and MPEP section 608.02(a) (Aug. 2001) (OIPE will not release applications to the Technology Centers [for examination] until acceptable drawings are filed . . . If a drawing is not timely received [by the PTO] in reply to a notice . . . , the application becomes abandoned for failure to reply.).

<sup>2</sup> The 2-month period for responding to a Notice to File Corrected Application Papers, similar to that in a Notice to File Missing Parts, is not identified on the Notice as a statutory period subject to 35 U.S.C. 133. Thus, extensions under 37 CFR 1.136(a) of up to 5 months are permitted. See MPEP 710.02(d) (Aug. 2001). In the instant case, the maximum extendable reply period would end on 1/15/02 if the maximum 5-month extension of time is obtained.

<sup>3</sup> See note 2, *supra*.

with the application on April 20, 2001, as well as the instant petition, contains a general authorization for the PTO to charge any required fees, which would include fees for extension of time under 37 CFR 1.136(a) to respond to the 6/15/01 Notice. Therefore, the general authorization is hereby treated as a **constructive petition** for a 4-month extension of time to file the corrected drawings in response to the 6/15/01 Notice.<sup>4</sup> Given that corrected drawings were filed with the instant petition prior to the expiration of the maximum extendable reply period, i.e., January 15, 2002, and that the constructive petition contained in the application transmittal and in the instant petition each provides for the requisite extension of time for timely submission of these corrected drawings, the application was not abandoned. The petition is thus dismissed as moot.

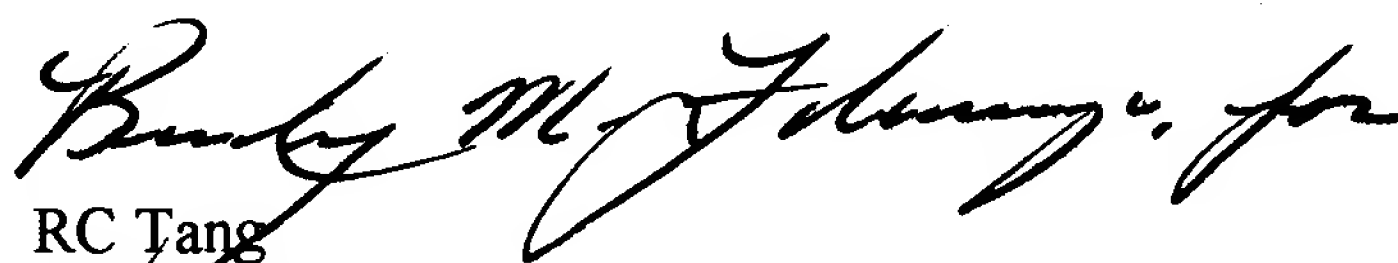
The \$1,280 petition fee has been credited to Deposit Account No. 13-2512 as authorized in the instant petition. The \$1,440 fee required for a 4-month extension of time has been charged to the same deposit account as authorized in the application transmittal and in the instant petition.

This application is being returned to OIPE for further processing.

Telephone inquiries concerning this matter may be directed to Petitions Attorney RC Tang at (703) 308-0763.



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<sup>4</sup> See 37 CFR 1.136(a)(3) and MPEP section 710.02(e) (Aug. 2001) (An authorization to charge **all required fees**, fees under §1.17 . . . will be treated as a **constructive petition** for an extension of time in any **concurrent or future** reply requiring a petition for an extension of time . . . for its timely submission.).

Only 4 months are required since the drawings were accompanied by a Certificate of Mailing dated 11/21/01; see 37 CFR 1.8(a)(1).